



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21780903

Date: APR. 22, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the issuance of a new decision.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, they have been physically present in the United States for a continuous period of three years since the date of their admission as a U nonimmigrant and they establish that their continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. The applicant bears the burden of establishing eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I &N Dec. 369, 375 (AAO 2010).

The regulation sets forth the particular eligibility requirements and application procedures for adjustment of status under section 245(m) of the Act. Specifically, 8 C.F.R. § 245.24(d)(9) requires applicants to submit evidence “including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years”

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U nonimmigrant status from October 2016 to October 2020. He filed the instant U adjustment application in June 2020. In her decision, the Director determined that the Applicant had not provided sufficient evidence to demonstrate continuous physical presence for at least three years since the date he obtained U nonimmigrant status. Accordingly, she issued a request for evidence (RFE) seeking a signed personal affidavit attesting to

the Applicant's continuous physical presence for at least three years since his admission as a U nonimmigrant. In response to the RFE, the Applicant submitted, among other things, an updated personal affidavit. The Director acknowledged the updated personal affidavit, but determined that it was insufficient because it did not *specifically address* the Applicant's continuous physical presence in the United States for at least three years since October 2016. She then denied the U adjustment application, concluding that the Applicant had not complied with the requirements of 8 C.F.R. § 245.24(d)(9).

On appeal, the Applicant submits an updated personal affidavit. We acknowledge that the Applicant does not specifically state that he maintained continuous physical presence for a period of at least three years since his admission in U nonimmigrant status in the updated affidavit. However, he alludes to the same by providing a list of his monthly activities in the United States from October 2016 to January 2022. Additionally, the Applicant submits a copy of a Form I-539, Application to Extend/Change Nonimmigrant Status, submitted to USCIS in January 2022, and copies of mortgage and bank statements from [redacted] Home Loans, [redacted] Mortgage, and [redacted] from January 2020 to December 2021. Because this additional evidence is material to the Director's ground for denial, we will remand the matter for the Director to consider this evidence in the first instance and redetermine whether the Applicant established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for the issuance of a new decision consistent with the foregoing analysis.